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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re BRIAN S. et al., Persons Coming
Under the Juvenile Court Law.

B256521, consolidated with B256536
(Los Angeles County
Super. Ct. Nos. CK87344, CK69766)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ERICK S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Tony L.
Richardson, Judge. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court declared the children of Erick S. (father) dependents of the court under Welfare and Institutions Code section 300, subdivisions (b) (risk of physical harm), (d) (risk of sexual abuse) and (j) (failure to protect).¹ Father argues insufficient evidence supported the court's jurisdictional findings. We will affirm.

FACTS AND PROCEEDINGS BELOW

On April 9, 2013, the Department of Children and Family Services (DCFS or the department) received a referral that Jazmin S., age 4, had been sexually abused and digitally penetrated by father. The ensuing investigation revealed that Jazmin made several reports of abuse by father. On April 6, 2013, Jazmin told Maria S. (mother) that father had digitally penetrated her and asked her to "suck on his penis." On April 9, Jazmin told a hospital social worker that father had intercourse with her and made her have oral sex with him in the past. On April 17, Jazmin repeated to a department social worker that father had asked her to "suck on his penis." She then said, "Just playing, he didn't touch me." On May 5, 2013, Jazmin's babysitter reported that Jazmin said her father "puts his private in her private." On May 14, during an interview at a child abuse crisis center, Jazmin told a forensic evaluator that father would poke her painfully in the genital area with his finger, lay on top of her and rub himself against her, and "suck" on her genital area, "porque dice que me quiere mucho [because he told me he loves me a lot]."

Jazmin was reported by mother, the babysitter, and healthcare workers to frequently touch and expose her genital area, and in her interview with the forensic evaluator she used two stuffed animals she identified as herself and father to simulate father on top of her rubbing his genital area against her. She was also able to identify the genital area on a drawing of an anatomically detailed adult male and told the evaluator father touched his genitals to her genital area.

Several medical examinations of Jazmin revealed no signs of abuse. However, Jazmin's therapist reported Jazmin experienced behavioral outbursts after visiting father,

¹ All statutory references are to the Welfare and Institutions Code.

had nightmares, and harbored an ongoing fear that father was at her bedroom window. Mother reported that Jazmin had become overly clingy and was fearful of being alone. On the other hand, visitation monitors reported Jazmin appeared comfortable in father's presence.

Interviewers often found Jazmin to be highly distractible, inconsistent in her statements, and sometimes nonresponsive. For example, Long Beach police reported they had investigated the family several times in the past regarding allegations of sexual abuse and found Jazmin was difficult to interview and was sometimes coached by mother to make allegations against father. The police informed the department that the Long Beach District Attorney would not prosecute father absent physical evidence of abuse. DCFS reported that the family had a history of seven allegations of physical and sexual abuse to the children going back years, all of which were investigated and ultimately dismissed as inconclusive or unfounded. During these investigations, some social workers concluded that mother would coach Jazmin and Brian S., her seven-year-old brother, to make allegations against father. In April and November of 2012, Jazmin denied that any inappropriate touching had occurred, and stated mother would tell her what to say about father.

On June 12, 2013, mother reported Jazmin made comments about wanting to die. She also reported that she observed Brian masturbating in the bathroom. When she talked to him, he said he had seen father masturbating in the living room and that he and father watched "sexy" movies together. At the hearing, it was revealed that Brian reported the movie watching as having occurred approximately a year in the past.

Father denied all allegations, contending Jazmin was being coached in what to say by mother, from whom he was estranged. D.L., father's girlfriend, and several family members also reported that mother would coach Jazmin to make false allegations against father. Father and D.L. did report, however, that Jazmin was acting out sexually. DCFS reported that father cooperated with all investigations and acted appropriately during all monitored visits.

DCFS petitioned the juvenile court under section 300, subdivisions (b), (d) and (j), for orders declaring Jazmin and Brian children dependents of the court. The department filed a separate petition as to D.L.'s two children, A.E. and N.S. The petitions as ultimately sustained alleged father sexually abused Jazmin, which put her, Brian, A.E. and N.S. at risk of physical harm.

At the jurisdictional hearing, Elmer Reyes, a dependency investigator, testified he was concerned that mother had coached Jazmin and it was his opinion that Jazmin had not been penetrated by father, but "[s]omething happened." Bradley McAuliff, an expert on children's suggestibility and forensic interviewing, testified he was "concerned" that Jazmin's allegations against father resulted not from actual abuse but from suggestions inadvertently and unknowingly conveyed to her by interviewers.

The juvenile court acknowledged concerns that Jazmin had been coached but observed her reporting of abuse remained largely consistent. The court found Jazmin, Brian, A.E. and N.S. were all persons described by section 300 and sustained the petitions. The court ordered that mother retain physical custody of Jazmin and Brian, that D.L. retain physical custody of her two children, and that father be provided with family reunification services.

Father timely appealed the jurisdictional and dispositional orders.

DISCUSSION

Father's sole contention on appeal is that the juvenile court's finding that he abused Jazmin must be reversed because it was based solely on unreliable, uncorroborated hearsay.

A child comes within the jurisdiction of the juvenile court under subdivision (b) of section 300 if he or she "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child" (§ 300, subd. (b)(1).) A child may be declared a dependent of the court under subdivision (d) of section 300 if he or she "has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or

her parent” (§ 300, subd. (d).) Subdivision (j) of section 300 applies if a child’s sibling has been abused or neglected as defined in subdivisions (b) or (d) “and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (§ 300, subd. (j).)

At a jurisdictional hearing, a juvenile court must base its findings on a preponderance of the evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) A disposition order that removes a child from the physical custody of a parent, on the other hand, must be founded on clear and convincing evidence both that a substantial danger exists “to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home” and that no reasonable means exist “by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).)

“On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*In re J.K., supra*, 174 Cal.App.4th at p. 1433.) “In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

Here, the juvenile court had before it evidence that on several occasions Jazmin told mother, a hospital social worker, a department social worker, her babysitter, a case social worker, and her therapist that father had digitally penetrated her, made her have oral sex with him, made her feel his penis, asked her to “suck on his penis,” “put his private in her private,” touched his penis to her genitals, and touched her genital area with his hand, making it hurt. During an interview at a child abuse crisis center, Jazmin told a forensic evaluator that father would poke her painfully in the genital area with his finger,

lie on top of her and rub himself against her, and “suck” on her genital area, “porque dice que me quiere mucho [because he told me he loves me a lot].”

It was also reported by several persons that Jazmin frequently exposed her genital area and used two stuffed animals she identified as herself and father to simulate father on top of her rubbing himself against her. She was also able to identify the genital area on a drawing of an anatomically detailed adult male and reported that father touched his genitals to her genital area.

Given these facts, the juvenile court had ample evidence from which to conclude father abused Jazmin and his children were at substantial risk of serious physical harm.

Father argues the evidence supporting the juvenile court’s finding consisted solely of the hearsay statements of a five year old, and was therefore insubstantial.

Hearsay evidence is admissible in dependency proceedings, and a jurisdictional finding may be based exclusively on hearsay so long as the declarant is under 12 years of age. (§§ 300, 355, subd. (c)(1)(B).) However, if a party timely objects, the hearsay of a declarant under 12 years of age will not be admitted if it “is unreliable because it was the product of fraud, deceit, or undue influence.” (§ 355, subd. (c)(1)(B).)

Father argues Jazmin’s hearsay statements were unreliable because she was known to have been coached by mother in the past and had received suggestions from her many interviewers regarding abuse. The argument is without merit.

First, a hearsay statement made by a person under 12 years old will be held inadmissible only if a timely objection is made. (§ 355, subd. (c); *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Here, father made no objection to Jazmin’s statements contained in the department’s dependency report.

Second, Jazmin’s statements were not the sole bases for the juvenile court’s findings. Jazmin’s mother, her babysitter, and a hospital social worker all reported that Jazmin exhibited sexualized behavior, including frequently exposing her genital area and using stuffed animals to mimic sexual acts. Father and D.L. also reported observing the behavior. Jazmin’s therapist reported Jazmin exhibited behavioral outbursts after visits by father, was wetting the bed and having nightmares, and was afraid father would come

in through her window. And mother reported Jazmin had become overly clingy and was fearful of being alone. This evidence corroborated Jazmin's statements that she had been sexually abused by father and constituted further support for the juvenile court's findings.

Third, Jazmin's statements were not shown to be the product of undue influence. Although many witnesses reported that mother had coached the child in the past, and Messrs. Reyes and McAuliff testified they were concerned she had been coached again or was at least suggestible, no evidence of recent coaching was ever introduced. The spontaneity, number and consistency of Jazmin's disclosures suggest they were not the result of coaching or suggestion.

In short, father established none of the prerequisites to finding Jazmin's hearsay statements were inadmissible, and in any event they were not the sole bases for the juvenile court's findings.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.